

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AGS, LLC, a Delaware limited liability
company; et al.,

Plaintiffs and Counter-Defendants,

v.

GALAXY GAMING, INC., a Nevada
corporation,

Defendant and Counter-Claimant.

Case No. 2:14-cv-02018-LDG-CWH

ORDER

Defendant and counter-claimant Galaxy Gaming, Inc., has filed motion to compel arbitration (#24, limited opposition # 38, reply #48), pursuant to the September 21, 2012 Asset Purchase Agreement between plaintiff Red Card Gaming, Inc., and Galaxy Gaming, Inc., and the Non-Competition and Right of First Refusal Agreement, both of which contain arbitration clauses. Plaintiffs do not dispute that the September 21, 2012 Asset Purchase Agreement between Red Card and Galaxy requires arbitration of claims between the parties. However, they deny that Red Card executed the Non-Competition and Right of First Refusal Agreement, and assert that Galaxy forged the signature.

Two questions arise. First, should the court or the arbitrator rule upon whether the Non-Competition and Right of First Refusal Agreement is void ab initio based on forgery. Second,

1 should the court or the arbitrator rule on preliminary injunctive relief sought by plaintiffs and
2 defendant.

3 I. Which tribunal decides the arbitrability of the Non-Competition and Right of First Refusal
4 Agreement

5 Plaintiffs argue that because the Non-Competition and Right of First Refusal Agreement is
6 not enforceable, neither is the arbitration clause contained within. In Buckeye Check Cashing, Inc.
7 v. Caregna, 546 U.S. 440, 446 (2006), the Supreme Court explained:

8 Challenges to the validity of arbitration agreements . . . can be divided into two types. One
9 type challenges specifically the validity of the agreement to arbitrate. The other challenges
10 the contract as a whole, either on a ground that directly affects the entire agreement . . . or
11 on the ground that the illegality of one of the contract's provisions render the whole
12 contract invalid. Respondents' claim is of this second type. The crux of the complaint is
13 that the contract as a whole (including its arbitration provision) is rendered invalid[.]

14 In such a case, the "challenge to the validity of the contract as a whole, and not specifically
15 to the arbitration clause, must go to the arbitrator." Id. Here, plaintiffs challenge the agreement by
16 asserting forgery, and not specifically the validity of the contract. Accordingly, both the
17 September 21, 2012 Asset Purchase Agreement between plaintiff Red Card Gaming, Inc., and
18 Galaxy Gaming, Inc., and the Non-Competition and Right of First Refusal Agreement must go to
19 the arbitrator.

20 II. Which tribunal should decide the motions for preliminary injunctive relief

21 Both the September 21, 2012 Asset Purchase Agreement between plaintiff Red Card
22 Gaming, Inc., and Galaxy Gaming, Inc., and the Non-Competition and Right of First Refusal
23 Agreement are subject to the rules administered by the American Arbitration Association. Rule
24 47(a) provides that "[t]he arbitrator may grant any remedy or relief that the arbitrator deems just
25 and equitable and within the scope of the agreement of the parties, including, but not limited to,
26 specific performance of a contract."

1 The court finds that, as the arbitration panel will be considering the merits in resolving the
2 disputes in this case, it is proper for the panel to also consider any preliminary injunctive requests.
3 Accordingly,

4 THE COURT HEREBY ORDERS that defendant's motion to compel arbitration (#24) is
5 GRANTED.

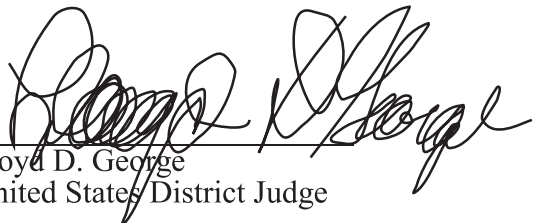
6 THE COURT FURTHER ORDERS that plaintiffs' motion for preliminary injunction (#8)
7 and defendant's motion for preliminary injunction (#15) are DENIED without prejudice to their
8 being reasserted in the arbitration proceedings.

9 THE COURT FURTHER ORDERS that plaintiffs' motion to strike, or in the alternative,
10 motion for leave to file surreply (#60) and motion for leave to file plaintiffs' motion to strike, or in
11 the alternative, motion for leave to file surreply (#62) are DENIED without prejudice.

12 THE COURT FURTHER ORDERS that defendant's motion to seal (#14) is DENIED
13 without prejudice.

14 THE COURT FURTHER ORDERS that all further proceedings in this action are hereby
15 STAYED pending the resolution of arbitration.

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17 DATED this 23 day of September, 2015.

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Lloyd D. George
United States District Judge
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